

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE GOOGLE DIGITAL ADVERTISING ANTITRUST LITIGATION	1:21-md-03010 (PKC) <i>ORDER ESTABLISHING</i> [PROPOSED] PROTOCOL FOR RECORDKEEPING OF CLASS COUNSEL'S TIME AND EXPENSES
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WHEREAS, on September 24, 2021, this Court directed plaintiffs' counsel in the transferred action *Surefreight Global LLC, et al. v. Google LLC*, Case No. 21-Civ-7001, to submit a proposed revised protocol for time-and-expense recordkeeping by October 1, 2021 (Doc. 129); and

WHEREAS, the time and expense protocol is substantially similar to the one entered by Judge Freeman in the Northern District of California actions prior to the creation of the MDL in this matter;

WHEREAS, plaintiffs' counsel in *Surefreight* have conferred with counsel for all plaintiffs asserting putative class claims in this multidistrict litigation regarding the contents of this proposed time and expense protocol and all counsel, who are signatories below, stipulate and agree to its contents.

NOW THEREFORE, having reviewed the proposed protocol, the Court hereby enters this Order to establish a protocol for the recording, submission, and review of attorneys' fees and expenses incurred by counsel for putative class plaintiffs in this multidistrict litigation.

**I. APPLICATION OF THIS ORDER**

1. This protocol applies to any constituent case of MDL 3010 (1:21-md-03010-PKC) that advances claims on behalf of any proposed class under Federal Rule of Civil Procedure 23.

2. This order shall not apply to any individual or opt-out action, or to actions brought by state attorneys general or by any other government agency or regulator.

## **II. CLASS COUNSEL'S TIME AND EXPENSE RECORDS**

### **A. General Standards**

3. Time and expense reports generated pursuant to this Order will be considered as submitting counsel's representation to the Court, under oath, that the time and expenses submitted meet the criteria set forth below.

4. The recovery of attorneys' fees and expense reimbursements will be limited to counsel representing plaintiffs in any class action complaint(s) pending before this Court, and their attorneys and professional staff, and such other counsel as are authorized by the Court to work under their direction (together, "class counsel").

5. Only time and expenses reasonably expended to advance the litigation on behalf of the proposed class(es) will be considered compensable.

### **B. Time Reporting**

6. All time shall be maintained in tenth-of-an hour increments. Time entries not maintained in tenth-of-an-hour increments may be disallowed.

7. All attorneys and staff working on this case will keep contemporaneous records of their time spent in connection with work on this litigation, indicating the amount of time spent, the particular activity, and their position in the firm (Partner, Of Counsel, Senior Counsel, Associate, Staff Attorney, Law Clerk, Paralegal, Legal Assistant, or Contract Attorney). "Contemporaneous" means that an individual's time spent on a particular activity should be recorded no later than seven days after that activity occurred. Full descriptions of the work performed are required. Time entries that are not

*ordinarily and reasonably  
paid by the lawyer or  
client for carrying on  
the lawyer's  
practice*

sufficiently detailed will not be considered for payment. Closely related tasks may be billed in a single entry, but lengthy block-billed entries are not acceptable.

8. Counsel will maintain their time records in an electronic database. Failure to maintain detailed time and expense records or to provide a sufficient description of the activities performed will be grounds for denying the recovery of attorneys' fees or expenses in whole or in part.

9. Time records must report the billing rates for each individual listed. Current hourly rates are to be used in calculating time. Billing rates may be adjusted *(by the Court)* at the conclusion of the matter dependent on uniform or local rates given relative years of experience to ensure *(that is)* the rate reflects the value added. *permitted under controlling precedent.* ✓

10. Only time spent on matters that advance the litigation will be considered in determining fees. Each separate transferred putative class action shall designate a single firm ("Designated Time and Expense Counsel") to be responsible for auditing time and expense records maintained by counsel of record for such action for compliance with the directives set forth in this Order, provided, however, that if multiple transferred actions organize their pleadings in a single consolidated complaint, they shall be considered a single action for purposes of this protocol. Designated Time and Expense Counsel will review and approve timekeeping and expenses each quarter and strike any duplicative or unreasonable time and/or expenses.

11. Designated Time and Expense Counsel's auditing responsibilities notwithstanding, the ultimate determination of what is compensable work, and the extent or rate at which it is compensable, is within the purview of the Court.

### 1. *Compensable Time*

12. Compensable work done on behalf of a putative class or classes may include, but is not limited to:

- fact investigation and factual and legal research;
- preparation of research memoranda, pleadings, case management filings, and briefs;
- conducting document discovery (e.g., reviewing, indexing, and coding documents);
- preparation for and attendance at depositions;
- preparation of and responding to discovery requests;
- preparation for and attendance at hearings;
- preparation for and attendance at meetings with defense counsel or with co-counsel;
- work with clients;
- work with experts;
- settlement and settlement negotiations and related activities;
- appellate work;
- trial preparation and trial; and
- performance of administrative matters specifically related to tasks undertaken for the benefit of a putative class or classes.

**2. *Non-Compensable Time***

13. Compensable work does not include:

- excessive time for a particular task;
- work performed by a person more senior than necessary for the task;
- duplicative time;

- “read and review” time (e.g., billing time for reading every document filed on the court’s docket regardless of whether it related to the individual’s responsibilities) unless specifically related to a billable task;
- unnecessary or duplicative time spent attending depositions or hearings;
- time for which descriptions are missing or incomplete; and
- internal firm time for firm management or recording and monitoring time submissions.

### **C. Expense Reporting**

14. Class counsel are entirely self-funded for these matters. If that changes, class counsel will report the change to the Court within 14 days.

15. All costs and expenses in this case will be advanced by class counsel. Following a judgment or settlement, class counsel will seek reimbursement of costs and expenses reasonably advanced for the prosecution of claims on behalf of a putative class or classes.

#### *1. Expenses*

16. To be eligible for reimbursement, expenses must meet the requirements of this section. Expenses must be:

- appropriately authorized;
- timely submitted;
- reasonable in amount; and
- supported by adequate documentation.

17. Reimbursable expenses include:

- costs related to obtaining, reviewing, indexing, and paying for hard copies of computerized images of documents;

- legal research (e.g., LEXIS, Westlaw, or PACER charges);
- deposition, court reporter, and transcript costs;
- costs for the electronic storage, retrieval, and searches of ESI;
- court filing and service costs;
- group administration matters, such as meetings and conference calls;
- reasonable travel expenses including lodging and meals;
- expert witness and consultant fees and related expenses;
- investigator fees and related expenses;
- printing, copying, coding, and scanning;
- telephone, postage charges, and courier charges;
- data and materials provided by outside third-party vendors, consultants and attorneys;
- witness expenses, including travel;
- translation costs; and
- bank or financial institution charges.

**2. *Expense Limitations***

18. Only reasonable expenses will be reimbursed. Except in extraordinary circumstances approved by class counsel, all travel reimbursements are subject to the following limitations:

- **Airfare:** Only the price of a coach seat for a reasonable itinerary will be reimbursed. Business/First Class Airfare will not be fully reimbursed. If Business Class/First Class Airfare is used, then an estimate of the difference between the Business Class/First Class Airfare and coach fare must be shown on

the travel reimbursement form, and only the coach fare portion will be reimbursed.

- Hotel: Hotel room charges for the average available room rate of a business hotel, such as the Hyatt, Westin, and Marriott hotels, in the city in which the stay occurred will be reimbursed. Unless a special discounted rate is negotiated, luxury hotels will not be fully reimbursed but will be reimbursed at the average available rate of a business hotel.
- Meals: Meal expenses must be reasonable, and shall not exceed \$125 per day per person (not including shared meal expenses that include meals for other attorneys working on the case, experts, etc.). Meal expense submissions must be supported by receipts or credit card statements that reflect the date and those partaking in the meal.
- Cash Expenses: Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, short taxi rides, etc.) will be reimbursed up to \$50.00 per day, as long as the expenses are properly itemized.
- Rental Automobiles and Ride-Hailing Services: Luxury automobile rentals will not be reimbursed. If luxury automobiles are selected when non-luxury vehicles are available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form, and only the non-luxury rate may be claimed, unless such larger sized vehicle is needed to accommodate several people working on the case.
- Mileage: Mileage claims must be documented by stating the origination point, destination, total actual miles for each trip, and rate per mile paid by the

member's firm. The maximum allowable rate will be the maximum rate allowed by the IRS (currently \$0.545 per mile).

- Parking: Parking will be limited to actual documented costs.

19. Other non-travel expenses will be limited as follows:

- Long Distance and Cellular Telephone: Long distance and cellular telephone charges must be documented.
- Shipping, Courier, and Delivery Charges: All such claimed expenses must be documented.
- Postage Charges: A contemporaneous postage log or other supporting documentation must be maintained.
- Telefax Charges: Contemporaneous records should be maintained and submitted showing faxes sent and received. The per-fax charge shall not exceed \$1.00 per page.
- In-House Photocopy: A contemporaneous photocopy log or other supporting documentation must be maintained. The maximum copy charge is \$0.30 per page.
- Computerized Research: Claims for LEXIS, Westlaw, PACER, and other computerized legal research expenses should be in the amount charged to the firm for these research services.

**D. Verification of Expenses**

20. Attorneys and staff must keep receipts for all expenses. Credit card receipts or monthly credit card statements are an appropriate form of verification. Hotel and restaurant costs must be supported by a credit card statement, hotel invoice, or restaurant bill. The description of unclaimed

expenses on the statement or invoice may be redacted. Receipts need not be submitted on a quarterly basis, but shall be maintained by counsel and may be required later as a condition of payment.

### **III. EXCHANGING TIME AND EXPENSE REPORTS**

#### **A. Timing of Exchange**

21. Designated Time and Expense Counsel will collect time and expense reports from other counsel working on the relevant action on a quarterly basis. Time and expense reports will be submitted to Designated Time and Expense Counsel no later than the twenty-first day of the month following the end of the quarter being reported. For example, reports for the third quarter (July through September) are due by October 21.

22. Any time and expense records submitted more than three months in arrears may not be considered or included in any compilation of time or expense calculation and may be disallowed, except for good cause shown and with Court approval.

#### **B. Content of Reports**

23. Each time report submission must be in the form of **Attachment A**, and each expense submission must be in the form of **Attachment B**.

SO ORDERED.

Dated:

11-4-21



Honorable P. Kevin Castel  
United States District Judge

**For the Surefreight Plaintiffs**

Dated: October 1, 2021

Respectfully submitted,

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# Attachment A

**Firm Name:**

**Time Period:**

**Categories:** 1) Pre-Complaint Investigation/Complaint Prep/Class member intakes 2) Court Hearings/Conferences/ Pretrial Stipulations 3) MTD Briefing/Research/Analysis 4) Class Cert Briefing/ Research/Analysis 5) SJ Briefing/Research/Analysis 6) Other Motion Practice/Research/Analysis 7) Discovery Requests/Responses/Meet & confer 8) Factual Development 9) Document Review 10) Depositions and Related Preparation 11) Experts/Expert Discovery/Daubert 12) Trial/Trial Preparation 13) Appeals 14) Settlement/ Settlement Administration/Notice

Professional Level: P = Partner; OC = Of Counsel or Counsel; SC = Senior Counsel; A = Associate; SA = Staff Attorney; PL = Paralegal; LA = Legal Assistant; LC = Law Clerk  
CA = Contract Attorney; OT = Other (explanation must be required)

## Attachment B

